

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION AT COLUMBUS**

GARY KLUSTY,

Petitioner,

: Case No. 2:17-CV-062

- vs -

Chief Judge Algenon L. Marbley
Magistrate Judge Michael R. Merz

JEFFREY NOBLE, Warden,
London Correctional Institution

:

Respondent.

DECISION AND ORDER DENYING MOTION TO FILE

This habeas corpus case under 28 U.S.C. § 2254 is before the Court on Petitioner's Motion for Leave to File *Instant* Objections to Report and Recommendations (ECF No. 15).

This case was filed by attorney Samuel Shamansky on behalf of Petitioner Klusty (Petition, ECF No. 1, PageID 15). Mr. Shamansky is an attorney at law admitted to practice before this Court, so the Court accepted his filing, as it would for any attorney in like circumstances. Thereafter, notice of court filings was made to Petitioner by transmission of the Notice of Electronic Filing (NEF) to Shamansky who filed a Reply to the Return of Writ on Petitioner's behalf on May 12, 2017. Nothing else happened in the case for two years until the Magistrate Judge reference was transferred to the undersigned on May 2, 2019. Because the case had been ripe for some time, the undersigned gave it first priority and filed a Report and Recommendations on May 3, 2019 (ECF No. 12). The Report had the appended Notice required by the Sixth Circuit of the requirement to file objections within fourteen days. *Id.* at PageID 1528. When no objections

had been filed by May 23, 2019, Judge Marbley adopted the Report and the Clerk entered judgment dismissing the Petition with prejudice (ECF Nos. 13, 14).

In support of his request to file objections now, Klusty provides a Declaration under penalty of perjury describing his relationship and communications with Samuel Shamansky from the time the Report was issued through July 19, 2019, when Shamansky visited him in prison and essentially advised him that doing anything further in the case would be a waste of time. He then began to search for new counsel and eventually retained Kort Gatterdam who entered his appearance in the case by filing the instant Motion.¹

The Federal Rules of Civil Procedure do not provide for filing objections to a Magistrate Judge report and recommendations after judgment. In order to have the Court consider the proposed objections on the merits, Petitioner must first have the judgment reopened under Fed.R.Civ.P. 60(b). As the case stands, the Report has been adopted, judgment entered, and the time for appeal has expired. Whether the Court would consider favorably a motion to reopen is a question not now before the Court. The Motion for leave to file *Instant* Objections is DENIED.

October 4, 2019.

s/ ***Michael R. Merz***
United States Magistrate Judge

¹ Technically, Mr. Gatterdam needs to substitute himself for Mr. Shamansky as the trial attorney in the case, following the procedure set forth in the Local Rules of this Court.